92-376

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No. 92-____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

DENNIS G. ANTZOULATOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED REVIEW

May the Money Laundering Control Act, 18 U.S.C. §1956(a)(1)(B), be applied to the sale of ordinary wares by a merchant innocent of the underlying criminal activity without denying a liberty protected substantively by the Due Process Clause of the Fifth Amendment?

PARTIES IN COURT BELOW

Other than the present Petitioner and Respondent, there were no parties to the proceedings in the Seventh Circuit Court of Appeals whose judgment is sought to be reviewed.

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OPINION BELOW

The decision of the Court of Appeals for the Seventh Circuit affirming the conviction is reported at United States v. Antzoulatos, 962 F.2d 720 (7th Cir. 1992). That decision is reprinted at Appendix A (App. 1a-15a) to this petition.

JURISDICTION

The decision of the Court of Appeals was entered May 7, 1992. The Court of Appeals granted in part and denied in part the timely petition for rehearing on May 29, 1992 (Order reprinted at Appendix B (App. 16a-19a)). This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This petition concerns the construction and application of the Due Process Clause of the Fifth Amendment to the United States Constitution which provides:

> No person shall ... be deprived of life, liberty, or property, without due process of law... .

U.S. Const. amend. V.

This petition also concerns the constitutionality of 18 U.S.C. §1956(a)(1)(B). This provision of the Money Laun-

dering Act of 1986 provides that:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity --
>
> * * *
>
> (B) knowing that transaction is designed in whole or in part --
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

18 U.S.C. §1956(a)(1)(B) (1988). 18 U.S.C. §1956(c) (1988) sets forth the relevant definitions of terms used in that section as it appeared at the time

of Mr. Antzoulatos' conduct:*

> (c) As used in this section--
>
> (1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);
>
> (2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

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* In November, 1990, Congress amended 18 U.S.C. §1956 in ways irrelevant to the issues raised in this petition. Specifically, Congress clarified application of 18 U.S.C. §1956(a)(2), which is not at issue here, extended the phrase "some form of unlawful activity" to include violations of foreign law, 18 U.S.C. §1956(c)(1), added to the list of violations constituting "specified unlawful activity," 18 U.S.C. §1956(c)(7), defined "state," 18 U.S.C. §1956(c)(8), and extended investigatory authority over offenses involving environmental crimes, 18 U.S.C. §1956(e). See 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927 (Nov. 29, 1990).

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon deliv-

ery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

* * *

(7) the term "specified unlawful activity" means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

(D) an offense under section 152 (relating to concealment

of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344

> (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 2319 (relating to copyright infringement), section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857) (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, or section 16 (relating to offenses and punishment) of the Trading with the Enemy Act.

18 U.S.C. §1956(c) (1988).

STATEMENT OF THE CASE

Dennis G. Antzoulatos was born in Greece and moved to the United States

with his family in 1969 while he was in high school. From late 1985 through 1990, Mr. Antzoulatos owned and operated a used car dealership in Milwaukee, Wisconsin called D & S Auto Sales, Inc., and later, Olympic Auto Sales.

During the late 1980's, various persons involved in selling cocaine in the Milwaukee area purchased a number of automobiles from Mr. Antzoulatos and asked that the automobiles be placed in others' names, which Mr. Antzoulatos did. Mr. Antzoulatos also permitted one man, Errol Jackson, to purchase cars at the Greater Chicago Auto Auction as a D & S employee. Three of those automobiles remained under the name of D & S Auto Sales although in fact they were Jackson's personal cars.

On September 11, 1990, a grand jury returned a four-count indictment against

Dennis G. Antzoulatos and an Antzoulatos employee, Grace C. Jim, in the Eastern District of Wisconsin.

Mr. Antzoulatos and Ms. Jim were charged in Count One with conspiracy to "launder" the proceeds of cocaine transactions in violation of 18 U.S.C. §§2, 371 and 1956(a)(1)(B)(i) & (ii). Counts Two through Four charged Mr. Antzoulatos with substantive violations of 18 U.S.C. §§2 and 1956(a)(1)(B). The indictment also sought forfeiture of certain property pursuant to 18 U.S.C. §982(a).

Mr. Antzoulatos moved to dismiss the prosecution on the ground that 18 U.S.C. §1956(a)(1)(B) is unconstitutional as applied in this case. The Magistrate recommended that the motion be denied, Mr. Antzoulatos objected, and the district court orally denied the motion following argument on October 29, 1990.

Soon after, the parties entered into a plea agreement and Mr. Antzoulatos pled guilty to Count One of the indictment, preserving for appeal his challenge to the constitutionality of 18 U.S.C. §1956 (a)(1)(B). See Fed. R. Crim. P. 11(a)(2).

On January 23, 1991, Mr. Antzoulatos was sentenced to 52 months imprisonment, three years supervised release, a fine of $7,500 and a $50 special assessment. Counts Two, Three and Four were dismissed on motion of the government.

Judgment of conviction was entered January 30, 1991. Mr. Antzoulatos timely filed his notice of appeal on January 25, 1991.

By decision dated May 7, 1992, the Court of Appeals for the Seventh Circuit affirmed Mr. Antzoulatos' conviction and sentence (App. 1a-15a). United States v. Antzoulatos, 962 F.2d 720 (7th Cir.

1992). That Court granted Mr. Antzoulatos' petition for rehearing to the extent of correcting certain factual errors in the original decision, but otherwise denied that petition on May 29, 1992. (App. 16a-19a).

REASONS FOR ALLOWANCE OF THE WRIT

Liberty includes the rights, among others, "of the individual to contract," and "to engage in any of the common occupations of life." Meyer v. Nebraska, 262 U.S. 390, 399 (1923). That understanding of liberty endures still. See Moore v. City of East Cleveland, 431 U.S. 494, 545 (1977) (White, J., dissenting) ("Meyer has not been overruled nor its definition of liberty rejected").

This definition just begins the inquiry, of course. Critical questions follow: what consideration is due that

liberty interest; by reason of which governmental objectives might it be limited; and how narrowly drawn must be the legislative instrument which advances the government interest to liberty's detriment. But unless thinking about freedom starts from the proposition that all liberty flows from government -- a remarkable hypothesis indeed -- there must be some irreducible core of the liberty to pursue a common trade that is beyond government's reach. That liberty must have some vitality independent of what the government may choose to allow it, in other words.

The money laundering provision at issue here, 18 U.S.C. §1956(a)(1)(B), intrudes into the core liberty Dennis Antzoulatos, the Milwaukee car dealer, may claim. He was not charged as a co-conspirator in the underlying unlawful activity of his customers. He was not

named an unindicted conspirator. He was not charged with adopting the conspiracy's purposes by long course of contempt for government warnings that he was aiding another's conspiracy. Cf. Direct Sales Co. v. United States, 319 U.S. 703, 705-08, 711-14 (1943). He was not charged with knowingly aiding and abetting, or causing indirectly, any drug offense. 18 U.S.C. §2. Neither did he fail to comply with some recordkeeping requirement that government might attach to a commercial transaction, such as filing a currency transaction report. 31 U.S.C. §5313. And he was not even charged with having himself the design to conceal the source or ownership of any property, or to avoid some reporting requirement through a transaction in ordinary goods; the government charged only that he knew others had that design.

Dennis Antzoulatos was convicted, in short, for selling cars to people who hoped to hide their wealth by buying them. He sold the cars in a way that was commercially atypical, but not in itself illegal under local, state of federal law. For that he is serving 52 months in a federal prison.

As applied here, then, this statute reaches well beyond criminal enterprises, or narcotics and those who deal in them: it reaches the butcher, the baker, and the candlestickmaker; the workaday shopkeepers and merchants who trade only in the ordinary stuff of life. Thus applied, the statute works to trample a liberty that government, by any of its three departments, is not free to tread upon.

There are three principal reasons to grant a writ of certiorari in this case.

First, the Court should rectify for purposes of substantive due process doctrine the perceived distinction between rights "personal" and rights merely "economic." The dichotomy is false, and no logical argument supports the extension of substantive due process to the "personal" right to die, for instance, but not to the "economic" right to work in a common calling.

Second, the opinion of the court below cramps the basic definition of the concept of liberty that this Court set out nearly a century ago, and indeed, the Seventh Circuit consistently takes a cramped view of that liberty (App. 9a-10a). Antzoulatos, 962 F.2d at 725 ("As this Court has noted, 'we do not consider [substantive due process] a blanket protection against unjustifiable interferences with property. That way

Lochner lies,'" quoting Schroeder v. City of Chicago, 927 F.2d 957, 961 (7th Cir. 1991)). The liberty to contract and to undertake ordinary labor is too close to the very roots of our republic to permit binding, lest the whole tree become stunted.

Third, in the opinion below, the United States Court of Appeals for the Seventh Circuit held that Mr. Antzoulatos could be punished criminally for selling cars to persons he knew to be drug dealers, if he also knew the purpose of the sale was to conceal the source, nature or ownership of proceeds (App. 10a). Antzoulatos, 962 F.2d at 725. Mere knowledge of another's unlawful past activities, or even of another's present unlawful plan, never has been sufficient basis for criminal liability, particularly where the goods at issue are not inher-

ently dangerous or closely regulated.

I.

THE DICHOTOMY BETWEEN "PERSONAL" AND "ECONOMIC" SUBSTANTIVE DUE PROCESS RIGHTS SHOULD BE REJECTED BY THIS COURT.

Substantive due process is not dead. Every sitting member of this Court either has written or joined an opinion that acknowledges the existence, and at least assumes the continuing health within its proper realm, of substantive due process doctrine. See Planned Parenthood of Southeast Pennsylvania v. Casey, 112 S.Ct. 2791, 2804-05 (1992); Foucha v. Louisiana, 112 S.Ct. 1780, 1804-09 (1992) (Thomas, J., dissenting); Cruzan v. Missouri Dep't of Health, 497 U.S. 261, 110 S.Ct. 2841, 2856-58 (1990) (O'Connor, J., concurring); Michael H. v. Gerald D., 491 U.S. 110, 122-23 (1989); United

States v. Salerno, 481 U.S. 739, 746 (1987); see also Tribe & Dorf, Levels of Cenerality in the Definition of Rights, 57 U. Chi. L. Rev. 1057, 1095 (1990) ("Tribe & Dorf") (quoting Justice Souter's approving comments on a limited role of substantive due process in his confirmation hearings).

But what has developed is an unfortunate dichotomy between the substantive due process consideration that "personal" rights receive, and that which "economic" rights get. Probably the distinction is nothing more than a Lochner taboo, understandable in terms of the culture of the bench but not as an intellectual corollary of the constitution.

The opinions of Justices Stevens and Powell in Moore v. City of East Cleveland, 431 U.S. 494 (1977), illustrate the split. The two justices agreed

that a city ordinance's definition of the "family" to which a home's occupancy was limited could not survive Fifth Amendment scrutiny. But for Justice Stevens, the issue was a homeowner's fundamental property rights and the takings clause; for Justice Powell and the plurality, the question was constitutional recognition of the nation's history and tradition of extended families. The plurality's approach was as personal as Justice Stevens' was economic, yet both agreed on outcome and neither could look merely to an express constitutional commandment or to procedural fairness for an answer.

This Court missed in Moore the synthesis between the economic and the personal in considering fundamental rights, and labored instead around arbitrarily fixed poles that neither are necessary nor analytically helpful. The constitu-

tion itself certainly does not elevate property interests over, or submerge them under, the personal liberty interests it acknowledges. Is a regulation forbidding a married couple to prevent conception with contraceptives, and thus requiring them to shoulder the financial risk of an unwanted child who would demand hundreds of thousands of dollars to raise to maturity, and might require indirect expenses such as a larger family home or car, personal or economic? The answer is elusive and, more importantly, bears not at all on the propriety of recognizing contraception as a constitutional right.

The distinction that has emerged is not the constitution's, then. It came about later, and "[j]ust why property itself was not a 'personal right' nobody took the time to explain." L. Hand, The Spirit of Liberty 206 (1960); see also

Dennis v. Higgins, ___ U.S. ____, 111 S.Ct. 865, 870 (1991) (noting Court's refusal to limit "rights, privileges or immunities" to personal, as opposed to property, rights).

This case should allow the Court to restore, if only incrementally, analytic clarity to substantive due process doctrine. The court below treated Mr. Antzoulatos' claim as an economic one, entitled to less consideration than a personal right. That was wrong.

II.

THE SEVENTH CIRCUIT'S DECISION UNDULY LIMITS THE SCOPE OF LIBERTY PROTECTED BY THE DUE PROCESS CLAUSE.

The fundamental benefit of liberty to which Mr. Antzoulatos lays claim is this: a right to sell his lawfully-acquired property in a commercially legal

manner without regard to the misdeeds or motives of the buyer (or of any third party), whom he does not intend to join. This right to sell lawfully acquired property firmly is linked to the constitution. Five times the constitution explicitly refers to property rights: in the due process clauses of the Fifth and Fourteenth Amendments; in the takings clause of the Fifth; in the contract clause, U.S. Const. art. I, §10; and in article IV, §3, ¶2. The (first) ex post facto clause, U.S. Const. art. I, §9, also has an obvious application to property rights.

The due process and takings clauses, as well as article IV, §3, reflect the implicit premise that there is a "pre-political" character to at least some property rights, Tribe & Dorf, supra, at 1603, for if property rights were nothing

more than the legislature should deem them to be, then there never would be a taking, or a deprivation for that matter; the legislature simply would exclude some interest from the marked field of property rights and, by definition, it would not be property. Necessarily, then, the framers understood the liberty interest in property to be fundamental in the truest sense: those rights existed and had content before, and thus were recognized but not created by our organic charter.

The most basic of property rights, in the sense that it requires the least extrinsic reference for its accumulation and exercise, is the right to sell (or extract value from) one's labor. Every healthy person is born able to toil -- he needs no money or collateral property first to allow him that -- and the imper-

ative that he not be deprived of the market value of that labor is the premise of the Thirteenth Amendment.

From that original property right follows closely the right to sell the products of that labor; this is inseparable from the original right, because the servitude would be just as complete for the person who works with her own capital, rather than in the employ of another who holds capital, if the maker could not enjoy the value of the goods she produced.

The basic right Mr. Antzoulatos claims is much narrower actually than that. Still there is a specific historical tradition in this country confirming the fundamental right Mr. Antzoulatos identifies, and all can agree that this tradition is relevant to the contours of the right if not to its very legitimacy. See Michael H. v. Gerald D., 491 U.S.

110, 127 n.6 (1989). The American ideal of unfettered trade in a free marketplace, and the ethic of the invisible hand, need little elaboration. And the right Mr. Antzoulatos claims is structured to allow by its terms room for cross-cutting American traditions of licensing and registration, and prohibitions on "fencing" and black markets generally.

Lochner era opinions, although not useful for their legal reasoning, are good historical markers of the basic understanding of liberty that Mr. Antzoulatos invokes and they have an overlooked value in that limited sense. The problem with Lochner and the like was not so much that the reasoning was value laden; it was that the informing values were not tightly confined to the constitution that provided occasion for the

doctrine. It follows that the answer to that problem is not to close the substantive scope of the due process clause to rights of a pecuniary or proprietary cast, but rather to reexamine the method of defining generally the substantive limitations on legislative process.

III.

DUE PROCESS BARS ELEVATING AN INNOCENT COMMERCIAL TRANSACTION TO A CRIMINAL VIOLATION BASED SOLELY UPON THE DEFENDANT'S KNOWLEDGE OF ANOTHER'S ILLEGAL PURPOSE OR STATUS.

In keeping with its view that "[s]ince the Lochner era, however, any substantive due process right to contract, or to engage in a lawful occupation, has been sharply curtailed" (App. 9a-10a), Antzoulatos, 962 F.2d at 725, the Seventh Circuit held that a person may be punished as a felon for selling

ordinary goods to a person he knows to be of a certain character, if he knows also that the customer intends to conceal the source, nature or ownership of the proceeds. The court below did not dispute that, but for that knowledge, the transactions here otherwise would have been altogether legal.

Never has this Court held that one person's knowledge of another's status and unlawful purpose alone will support a conspiracy conviction of the first. See, e.g., United States v. Falcone, 311 U.S. 205, 207-11 (1940) (sellers who supplied sugar and yeast they knew would be used in illicit distilling not guilty of conspiracy if no knowledge of conspiracy, even if they furthered its objectives); Direct Sales Co., 319 U.S. at 711-15 (seller of morphine, a restricted and inherently dangerous product, held to con-

spire with buyer where volume, frequency and repetition of sales with knowledge of buyer's illegal use supported inference of intent to join). But that is exactly what the court of appeals approved here.

Antzoulatos was not charged with intent to deal drugs, or even with himself having the purpose to conceal proceeds. He was charged only with knowing that customers had dealt illegal drugs, and knowing that these customers sought to hide their proceeds. This, in the Seventh Circuit's view, sufficed to make Antzoulatos a "conspirator" -- a joint participant intending the customers' object.

There is no logical stopping point to that reasoning short of allowing government to punish criminally any seller for any past misdeed of any buyer. The Seventh Circuit's additional qualifica-

tion, that the seller must know also of the buyer's intent to conceal the source, nature or ownership of proceeds, is no limitation at all. The nature of every commercial transaction is that one item will be exchanged for another item of different character: a dollar bill for a loaf of bread; "a dead rat and a string to swing it with" for a turn with a brush and a pail of whitewash (see S. Clemens, The Adventures of Tom Sawyer 25 (1876) (Magnum paperback ed. 1967)); and so forth almost endlessly. People engage in commercial transactions at all because they value a different item they do not have more highly than one they do have. The nature of every commercial exchange, in short, is to change the nature and add one transactional level to the source of proceeds, and in this sense to conceal (however innocently).

Absent a legal duty to act, there is no criminal culpability in merely knowing something bad. Section 1956(a)(1)(B), as the Seventh Circuit understands it, imposes on an ordinary merchant just such a legal duty to act: forego your livelihood to the extent of a class of customers, though there be no public interest in arresting the flow of the goods you sell and you have not yourself joined the criminal purpose of the customer. Those who govern a free people may not impose such a duty, Antzoulatos believes.

CONCLUSION

For the reasons stated the petition for a writ of certiorari to the United States Court of Appeals for Seventh Circuit should be granted.

Dated at Milwaukee, Wisconsin, August 27, 1992.

Respectfully submitted,

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APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 91-1306

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DENNIS G. ANTZOULATOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 90-CR-171—Thomas J. Curran, *Judge.*

ARGUED DECEMBER 13, 1991—DECIDED MAY 7, 1992

Before CUMMINGS, WOOD, JR.,* and KANNE, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* Dennis G. Antzoulatos, a used car dealer in Milwaukee, pled guilty to one count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B) and was sentenced to 52 months in prison. He now appeals, claiming that the statute as applied to him violates his due process rights under the Constitution. The plea agreement Antzoulatos signed preserves his right to ap-

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* Judge Wood, Jr., assumed senior status on January 16, 1992, which was after oral argument in this case.

peal this issue. Antzoulatos also appeals his sentence, arguing that the district court erred in not giving him credit for acceptance of responsibility under the Guidelines.

I.

Antzoulatos owned and operated a used car dealership in Milwaukee, Wisconsin, under the name of D & S Auto Sales ("D & S") between December 1985 and February 1989, and under the name of Olympic Auto Sales between February 1989 and September 1990. During this time period, Antzoulatos sold cars to Billy Cannon, James Verser, Greg Farrow, Errol Jackson and Hays Barker, all of whom Antzoulatos admits were involved in selling cocaine during that time. Antzoulatos titled the cars in names other than those of the above drug dealers—on several occasions the cars were titled in the name of D & S. Antzoulatos denies that he knew at the time he sold the cars that these men were drug dealers or that the mistitling was done for the purpose of hiding the proceeds of drug transactions.

A federal grand jury handed down a four-count indictment against Antzoulatos and his employee Grace Jim on September 11, 1990. Count one of the indictment charged Antzoulatos with being a member of a conspiracy whose object was to conduct financial transactions involving the proceeds of specified unlawful activity involving controlled substances in violation of 18 U.S.C. § 1956(a)(1)(B).[1] The indictment alleged that the defendant or Grace Jim performed a number of overt acts in furtherance of the conspiracy, including selling numerous cars and trucks to drug dealers and titling them in other persons' names between 1986 and 1990. One transaction with Errol Jackson is outlined in detail by the indictment. On January 28,

[1] Counts two through four, charging Antzoulatos with aiding and abetting various substantive violations of 18 U.S.C. § 1956(a)(1)(B), were dismissed pursuant to the plea agreement entered into by Antzoulatos.

1987, Antzoulatos allegedly bought a 1985 Mercedes-Benz 380 SE from the Metro Milwaukee Auto Auction by check for $32,525 on behalf of Errol Jackson. On that day, Antzoulatos deposited $25,000 in cash in the checking account of D & S, and the following day made separate deposits of $6,500 and $1,000 to that account. This car was sold on August 2, 1988, to Billy Cannon. A state of Wisconsin application for title listed D & S as the seller when it was in fact purchased from Errol Jackson. On December 19, 1989, Antzoulatos advised Billy Cannon to lie to federal agents if questioned about the purchase of the 1985 Mercedes-Benz.

The Pre-Sentence Report presents in more detail Antzoulatos' close relationship with Jackson and the other cocaine dealers. Greg Farrow purchased two cars from Antzoulatos, and told him that he did not want the cars titled in his name because he did not want them linked to him. The vehicles were therefore placed in the name of Farrow's mother and girlfriend. James Verser purchased four cars from Antzoulatos, and also told him he did not want to be linked to the cars. The cars were titled in the name of others; one of Verser's cars was titled in the name of his one-year-old nephew. Hays Barker purchased approximately 20 cars from Antzoulatos, many of which were titled in fictional names. According to the Pre-Sentence Report, Barker would use a particular car for two to three weeks for delivering drugs and then trade it in on the purchase of another vehicle.

Errol Jackson had a particularly close relationship with Antzoulatos. Antzoulatos paid Jackson $500 a week in order to give Jackson the appearance of an employee, even though Jackson did not work at Antzoulatos' dealership in any traditional sense of the term. Indeed, Jackson apparently repaid his "salary" to Antzoulatos under the table. Jackson did insist on retaining 50 percent of the profits from certain customers he was bringing into the car lot. Jackson also ensured that his personal cars were titled in the name of D & S. In addition to using the Mercedes

referred to above, Jackson bought with Antzoulatos' permission a 1984 Rolls Royce Silver Spur valued at $57,900 at a Chicago Automobile Auction, forging Antzoulatos' signature on a D & S check. Jackson paid Antzoulatos back for the Rolls Royce with seven different cashier's checks purchased at different banks in order to avoid having any one bank generate a Currency Transaction Report. The Rolls Royce was also titled in the name of D & S, and like the Mercedes was used by Jackson as his personal car. Jackson in similar fashion also purchased a Chevrolet Blazer at an automobile auction, made sure it was placed in the name of D & S, and used it as his personal car.

The Pre-Sentence Report indicates that Farrow, Verser, Barker and Jackson all told Antzoulatos that they were drug dealers and that they needed to mistitle their cars in order to conceal the profits from their drug dealings. Antzoulatos denies this, admitting only that he had heard hearsay and rumors from other sources that these individuals were involved in drugs. Antzoulatos also vehemently denied allegations in the Report that he was personally involved in drug dealing. Antzoulatos did not deny any other facts outlined in the Report.

On the day before his trial was scheduled to begin, after his co-defendant Jim indicated that she would testify against him, Antzoulatos decided to enter a plea agreement. The plea agreement states that "[t]he defendant acknowledges, understands and agrees * * * that defendant is, in fact, guilty of the offense [described in Count one of the indictment]." R. 52 at 7. Antzoulatos therefore agreed that he engaged in financial transactions knowing that the property involved represented the proceeds of unlawful activity, and knowing that the transactions were designed to conceal the nature or source of the proceeds or to avoid a transaction reporting requirement. At the plea hearing, Antzoulatos acknowledged his role in the transactions described above, but continued to maintain that he did not know at that time that these persons were drug dealers. Antzoulatos' attorney prompted Antzoulatos at the hearing several times to admit only that "he should have known."

There is absolutely no indication that a jury would have been allowed to convict Antzoulatos on a simple negligence standard; indeed, the government proposed a jury instruction regarding the definition of "knowingly" that included a discussion of conscious avoidance and did not include the phrase "should have known."

At the sentencing hearing, the colloquy concerning Antzoulatos' state of mind continued. The judge did not make an explicit finding that Antzoulatos actually, subjectively knew that the persons he dealt with were drug dealers. Judge Curran's statements at the sentencing hearing reveal, however, that he believed that Antzoulatos either knew or at the very least deliberately turned a blind eye towards the fact of his customers' ill-gotten gains:

> —[T]he Court finds almost impossible to imagine that [Antzoulatos] could not have been aware of [Jackson, Cannon, Farrow and Barker's activities]. R. 68 at 16.
>
> —Now if there's a group in our society who is more inquisitive about who you are and where you work and how much money you've got than a car salesman, I haven't met that person. * * * [Antzoulatos' story] is a little like the old story of the piano player and the whore house, claiming he doesn't know what's going on upstairs. *Id.* at 25.
>
> —It doesn't seem to me that you can simply sit like Pontious Pilot [sic] and say I didn't see any evil and I didn't do any evil * * *. *Id.* at 37.

II.

Antzoulatos challenges the constitutionality of 18 U.S.C. Section 1956(a)(1)(B) as applied to him. This provision of the Money Laundering Act of 1986 provides that:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts

to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

* * *

(B) Knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal Law,

shall be sentenced * * *.[2]

To summarize, then, a conviction under this part of the statute requires the government to prove the following:

(1) that the defendant took part in a financial transaction involving the proceeds of specified unlawful activity;

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[2] The statute also defines some of the terms used above:

(1) The term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony * * *.

(2) The term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction.

(3) The term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition * * *.

(4) The term "financial transaction" means (A) a transaction (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce * * *.

(5) The term "monetary instruments" means (i) coin or currency * * * personal checks, bank checks, and money orders * * *.

18 U.S.C. § 1956(c)(1)-(5). Additionally, the term "specified unlawful activity" is defined in Section 1956(c)(7) and encompasses a lengthy list of crimes, including, by reference to Section 1961(1) of Chapter 18, any offense relating to the "felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs."

(2) that the defendant knew that the property involved was the proceeds of specified unlawful activity; and

(3) that the defendant knew that the transaction was designed, in whole or in part, either to (a) conceal or disguise the proceeds, or (b) avoid a transaction reporting requirement.

Antzoulatos contends that when applied to a merchant like himself, the Money Laundering Act violates his substantive due process right to engage in a lawful occupation. Antzoulatos also contends that the Act as applied to him is void for vagueness.

We are unable to locate any reported case that has discussed the constitutionality of Section 1956(a)(1)(B) in relation to a money laundering financial transaction as applied to a seller who is not charged with the underlying criminal activity. The majority of reported cases involve a defendant charged with both drug dealing and money laundering—*i.e.*, they involve drug dealers laundering their drug money. In these cases, the drug dealer is the "purchaser" in the money laundering financial transaction who uses his ill-gotten proceeds to buy various goods or services, or who otherwise tries to hide his proceeds. Nothing in the language of Section 1956(a)(1)(B), however, distinguishes between persons directly involved in the unlawful activity and those involved only in laundering the proceeds of the unlawful activity.

Throughout his constitutional arguments, Antzoulatos intimates that he is only guilty of negligence, that he "should have known" that the customers listed in the indictment were drug dealers. Significantly, however, Antzoulatos makes no claim on appeal that his guilty plea was involuntarily made under the belief that he could have been convicted under a simple negligence standard. He did not deny his involvement in any of the transactions outlined in the indictment and in the Pre-Sentence Report, but only denied any knowledge he was dealing with drug dealers. Antzoulatos declined the opportunity to go to trial and make the government prove that he knew the monies

he received were proceeds from drug deals and also prove that he knew the purpose of the transactions was to disguise the nature or source of these funds. We agree with the trial judge that any lack of actual knowledge on Antzoulatos' part amounted at a minimum to wilful blindness or conscious avoidance.

It is well settled that wilful blindness or conscious avoidance is the legal equivalent to knowledge. In the seminal case of *United States v. Jewell*, 532 F.2d 697 (9th Cir. 1976), certiorari denied, 426 U.S. 951, the court upheld a jury instruction that a defendant "knowingly" possessed marijuana even if he was not actually aware it was in his car if "his ignorance in that regard was solely and entirely a result of his having made a conscious purpose to disregard the nature of that which was in the vehicle, with a conscious purpose to avoid learning the truth." *Id.* at 700. This Court and other courts of appeals have consistently upheld the use of so-called ostrich instructions based on conscious avoidance when supported by the evidence. See *United States v. Ramsey*, 785 F.2d 184, 189-190 (7th Cir. 1986) (collecting cases), certiorari denied, 476 U.S. 1186; cf. *United States v. Bader*, 956 F.2d 708, 710 (7th Cir. 1992) (construing the term knowingly in the Sentencing Guidelines to include more than "should have known" but noting the possibility of conscious avoidance).

We therefore examine the constitutionality of Section 1956(a)(1)(B) as applied to a merchant who actually knew that he was dealing with drug dealers and their money, or deliberately turned a blind eye regarding this fact. It should be stressed that we do not consider the constitutionality of a statute that imposes criminal penalties upon a merchant for selling goods to persons he "should have known" were laundering tainted money, or to persons he was merely suspicious were laundering tainted money.[3]

[3] The statute's legislative history confirms that more than mere suspicion is required on the merchant's part. An earlier version

(Footnote continued on following page)

Antzoulatos argues that his conviction violates his right to substantive due process as guaranteed by the Fifth Amendment. He posits either a liberty or property right to sell lawfully acquired goods to persons he does not actually know are drug dealers. The Supreme Court noted in 1923 that the concept of liberty in the due process clause

> denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God * * * .

Meyer v. Nebraska, 262 U.S. 390, 399. The Supreme Court has on several occasions confirmed substantive due process rights for parents to educate their children outside of public schools (*Wisconsin v. Yoder*, 406 U.S. 205; *Pierce v. Society of Sisters*, 268 U.S. 510), for family members to live together (*Moore v. City of East Cleveland*, 431 U.S. 494), and for women to choose abortions in certain circumstances (*Roe v. Wade*, 410 U.S. 113). Since the *Lochner*

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[3] *continued*

of the provision at issue contained "reason to know" and "reckless disregard" standards; this language was replaced in response to concerns raised by several witnesses during hearings on the bill. S. Rep. No. 433, 99th Cong., 2d Sess. 6-8 (1986). The report continues,

> The "knowing" scienter requirements are intended to be construed, like existing "knowing" scienter requirements, to include instances of "willful blindness." * * * [A]n automobile dealer who sells a car at market rates to a person whom he merely suspects of involvement with crime, cannot be convicted of this offense in the absence of a showing that he knew something more about the transaction or the circumstances surrounding it.

Id. at 9-10.

The Second Circuit has noted that the plain meaning of the statute requires a "knowing" mental state rather than mere recklessness or negligence. *United States v. Lora*, 895 F.2d 878, 880 n.2 (2d Cir. 1990).

era, however, any substantive due process right to contract, or to engage in a lawful occupation, has been sharply curtailed. See *Moore*, 431 U.S. at 501. As this Court has noted, "we do not consider [substantive due process] a blanket protection against unjustifiable interferences with property. That way *Lochner* lies." *Schroeder v. City of Chicago*, 927 F.2d 957, 961 (1991).

Even if we were to accept that Antzoulatos has a generalized liberty interest in selling lawfully acquired cars, we do not believe that the interest stretches so widely to immunize Antzoulatos' conduct in this case. Section 1956(a)(1)(B) places but a narrow restriction on Antzoulatos' ability to sell his merchandise. He is only barred from selling to persons he knows are drug dealers, and only then when the known purpose of the sale is to conceal the source, nature or ownership of the proceeds. Antzoulatos does not, and could not, assert that this restriction on his right to sell his property amounts to a governmental taking. We conclude that Antzoulatos' right to liberty under the Fifth Amendment was not violated.

Antzoulatos also argues that the Money Laundering Act is void-for-vagueness as applied to him. "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357. The most important aspect of the doctrine is the requirement that the legislature establish minimal guidelines to govern the discretion of law enforcement officials. *Id.* at 358. Yet since legislatures are "condemned to the use of words, we can never expect mathematical certainty from our language." *Grayned v. City of Rockford*, 408 U.S. 104, 110.

Vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in light of the facts of the case at hand. *Chapman v. United States*, 111 S. Ct. 1919, 1929; *Village of Hoffman Estates v. Flip-*

side, Hoffman Estates, Inc., 455 U.S. 489, 495 n.7. Regulation of economic activity, such as Antzoulatos' ability to sell cars, simply does not implicate the First Amendment. Cf. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (drug paraphernalia law not vague as applied to shopkeeper); *United States v. National Dairy Products Corp.*, 372 U.S. 29 (Robinson-Patman Act not vague as applied to businesses making sales below cost). Therefore, Antzoulatos' vagueness arguments must be examined in light of the particular facts of his case.

We conclude that Section 1956 is not unconstitutionally vague as applied to Antzoulatos. This Court in *United States v. Jackson*, 935 F.2d 832 (1991), has already rejected a vagueness challenge to 18 U.S.C. Section 1956(a)(1). As we have done above, the Court in *Jackson* carefully examined the statute and noted that it requires the government to prove both that the defendant knew the proceeds involved in a particular transaction were of a specified unlawful activity, and that he knew the transaction was designed to conceal one of the enumerated attributes of these proceeds. *Id.* at 838-839.

> These requirements of intent and knowledge "do[ ] much to destroy any force in the argument that application of the [statute] would be so unfair that it must be held invalid," *Boyce Motor Lines v. United States*, 342 U.S. 337, 342 * * *, "especially with regard to the adequacy of notice to the complainant that his conduct is proscribed." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 * * *.

Id. at 839. The Court also noted that the definitions included at 18 U.S.C. Sections 1956(c)(1)-(7) mitigate any possible vagueness of the terms used in the statute and show that Congress has adequately provided guidelines to law enforcement officials. *Id.*

Antzoulatos correctly points out that the defendant in *Jackson* was convicted on separate counts of distributing drugs and laundering *his own* drug money by depositing it into a church bank account and using it to purchase

various personal items. We agree that the vagueness question is closer here, where the statute is applied to a car dealer not directly involved in drug dealing. A drug dealer, if convicted on both a narcotics count and a money laundering count, by hypothesis knows that he is using tainted proceeds in the transaction, and also knows that his purpose is to conceal the nature or source of the proceeds. The merchant, on the other hand, has not been involved with the proceeds prior to the transaction.

The question therefore arises: how does the merchant "know" that a transaction is being consummated with tainted money and further know that the purpose is to conceal something about that money? It presumably would be sufficient when the merchant personally observes the unlawful activity and sees that the proceeds are being used to buy goods from him. It also is presumably sufficient if the buyer says directly to the merchant: "this money is tainted." More problematic is asking the merchant to rely on the word of third persons, who may or may not be believable. Also problematic is permitting the merchant to rely on the appearance of a buyer, or on the presence of unexplained wealth.

We are confident that courts are capable of ferreting out prosecutions that present insufficient evidence of knowledge on the part of the merchant. The case of *United States v. Campbell*, 777 F. Supp. 1259 (W.D.N.C. 1991), is a good example of a careful application of Section 1956(a)(1)(B) to a merchant. The defendant in *Campbell* was a real estate agent who facilitated the sale of a house to a drug dealer. The district court overturned the agent's money-laundering conviction. Evidence that the buyer paid cash, the buyer was a "known" drug dealer in a town thirty miles away, the buyer dressed flashily, and the defendant's associate told her that there "may have been drug money" involved was held insufficient to support a conclusion that the defendant knew that the buyer was paying for real estate with drug proceeds. *Id.* at 1268.

Focusing on the particular facts of this case, we conclude that Section 1956(a)(1)(B) is not unconstitutionally

vague as applied. Unlike the defendant in *Campbell*, Antzoulatos is closely linked to the drug dealers with whom he dealt. Antzoulatos allowed one drug dealer access to his company's checks to purchase cars at area auto auctions. He allowed this dealer on several occasions to pay him back in cash increments designed to avoid currency transaction requirements. Several of the customers were prepared to testify at trial that they told Antzoulatos directly that they were drug dealers and needed to conceal their drug profits. He mistitled scores of cars for his drug-dealing customers over a period of years.[4] Antzoulatos decided to plead guilty and does not contend that this plea was involuntary or that a factual basis for his plea was not established. Given these circumstances, we believe that Antzoulatos was adequately put on notice that his conduct would be considered unlawful.

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[4] The mistitling of cars is relevant in this case only because of the number of incidents involved and only then when viewed in conjunction with the other facts of this case. There is certainly nothing illegal about buying a car and placing that car in someone else's name; parents do it frequently for their children. The Tenth Circuit in *United States v. Sanders*, 929 F.2d 1466, 1472-1473 (10th Cir. 1991), certiorari denied, 112 S. Ct. 143, overturned a money laundering conviction that was based on the purchase of two cars using drug proceeds, one of which was titled in the name of the drug dealer's daughter. These two transactions were held insufficient to show a purpose of concealment, especially when the daughter was physically present at the purchase of the car placed in her name. Antzoulatos' case is different because of the number of transactions he engaged in involving mistitling, and because many of the cars were titled in fictional names or the name of his company. Cf. *United States v. Gurary*, 860 F.2d 521, 526-527 (2d Cir. 1988) (upholding conscious avoidance instruction for defendant charged with aiding preparation of fraudulent tax returns where defendant was involved in hundreds of transactions, but implying a different result if only a single transaction had been involved), certiorari denied, 490 U.S. 1035.

III.

Antzoulatos argues in the alternative that the trial court erred in denying him credit for acceptance of responsibility under U.S.S.G. § 3E1.1(a). Under this section, a defendant is entitled to a 2-level offense level reduction "[i]f the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct." The district judge's determination in this regard is a finding of fact that we may overturn only if it is clearly erroneous. *United States v. Franklin*, 902 F.2d 501, 505 (7th Cir. 1990), certiorari denied, 111 S. Ct. 274. Antzoulatos is not entitled to a reduction merely because he entered a guilty plea. U.S.S.G. § 3E1.1(c).

Because we are not left with the definite and firm conviction that a mistake has been committed, see *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, we affirm the district judge's decision to deny Antzoulatos' credit for acceptance of responsibility. The district court thoroughly examined the various factors noted in Application Note 1 to Section 3E1.1, including the fact that Antzoulatos did not voluntarily withdraw from criminal conduct, and that Antzoulatos' plea was made on the day of trial. Most significantly, the Court considered Antzoulatos' written letter to the Court to be unbelievable:

> But repeatedly, and more importantly as I read through here, he excuses himself. * * * [H]e says he spent most of his time purchasing his own vehicles and not paying any attention to what Farrow and Jackson were doing, even though they purchased a Rolls Royce at that auction. * * * [H]e has a relationship with an individual which * * * gives him 50 percent of the profits of certain customers, at the same time claiming that he didn't know what type of business he was engaged in. * * * I have been asked to accept a lot of unusual stories, but this one is more than I can swallow.

Tr. at 24-26. These findings are not clear error.

For the foregoing reasons, we AFFIRM the sentence of Dennis G. Antzoulatos.

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APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

May 29, 1992

Before

Hon. WALTER J. CUMMINGS,
Circuit Judge
Hon. MICHAEL S. KANNE,
Circuit Judge
Hon. HARLINGTON WOOD, JR.,
Senior Circuit Judge

UNITED STATES OF AMERICA	) Appeal from the
	) United States
Plaintiff-Appellee,	) District Court
	) for the Eastern
No. 91-1306 vs.	) District of
	) Wisconsin.
DENNIS G. ANTZOULATOS,	)
	) No. 90-CR-171
Defendant-Appellant.	)
	) THOMAS J.
	) CURRAN, Judge.

ORDER

The opinion issued May 7, 1992, is hereby amended as follows:

1) On page 1 of the slip opinion, at

the third line of the opinion, "money laundering" is amended to read "conspiring to launder money".

2) The sentence straddling pages 3 and 4 of the slip opinion is amended as follows:

> In addition to using the Mercedes referred to above, Jackson bought with a D & S buyer's card a 1984 Rolls Royce Silver Spur valued at $57,900 at a Chicago Automobile Auction, forging Antzoulatos' signature on a purchase agreement.

3) The first full sentence on page 4 of the slip opinion is amended by deleting the words "Antzoulatos back".

4) The first two sentences of the first full paragraph on page 4 of the slip opinion is amended as follows:

> The Pre-Sentence Report indicates

that Farrow, Verser and Barker all told Antzoulatos that they were drug dealers and that they needed to mis-title their cars in order to conceal the profits from their drug dealings. Antzoulatos denies this, as well as allegations that he knowingly titled cars in fictional names, admitting only that he had heard hearsay and rumors from other sources that these individuals were involved in drugs.

5) The second full sentence on page 13 of the slip opinion is amended as follows:

Antzoulatos allowed one drug dealer repeatedly to purchase cars with his company's buying card at area auto auctions.

6) The third full sentence on page 13 of the slip opinion, beginning with "He

allowed", is deleted.

In all other respects the petition for rehearing is DENIED.

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